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K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690			SAGER, MARK ALAN	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/655,969	<b>Applicant(s)</b> WALKER ET AL.	
	<b>Examiner</b> M. Sager	<b>Art Unit</b> 3714	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 42,43,47,48 and 51-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42,43,47,48 and 51-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 102***

1. Claims 42-43, 47, 51 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Wynn. This holding is maintained from prior action and incorporated herein for cited claims as amended. Response to remarks is provided below and incorporated herein. Wynn discloses a computer readable medium encoded with instructions to perform a concierge service system (abstract, 2:10-3:29, 5:7-11:64, figs 1- 20A) teaching to determine a player engaged in gaming activities at a gaming device would like to communicate with another (abstract, 2:10-3:29, 5:7-11:64, figs 1-20A) having access to a portable communication device (abstract, 2:10-3:29, 5:7-28, figs 1-20A, ref 16), monitor gaming activities of a player at a gaming device (abstract, 2:10-3:29, 5:7-6:45, 7:28-9:33, 11:1-64, figs 1- 20A), obtain a player identifier of a name, address a tracking card or hotel room number when player is a guest (abstract, 2:10-3:29, 4:45-59, 5:7-6:45, 7:28-9:33, 9:63-64, 11:1-64, figs 1- 20A), determine an individual who will communicate with player (abstract, 2:10-3:29, 5:7-6:45, 7:28-9:33, 11:1-64, figs 1-20A, concierge) and enable communication between player and individual via the portable communication device (abstract, 2:10-3:29, 5:7-6:45, 7:28-9:33, 11:1- 64, figs 1-20A), determine, based on the gaming activities, a prompt comprising an offer for product or service to be presented by an individual to the player and transmit the prompt to the individual (abstract, 2:10-3:29, 5:7-6:45, 7:28-9:33, 11 : 1-64, figs 1-20A), enabling the individual to provide a service to the player (abstract, 2:10-3:29, 5:7-6:45, 7:28-9:33, 11:1-64, figs 1-20A).

***Claim Rejections - 35 USC § 103***

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

Art Unit: 3714

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 42-43, 47-48 and 51-61 are rejected under 35 U.S.C. 102(b) as anticipated by Walker '431 or, in the alternative, under 35 U.S.C. 103(a) as obvious over Walker '431 in view of Wynn. This holding is maintained from prior action. Response to remarks is provided below and incorporated herein. Walker discloses a gaming device and method teaching claimed steps/features including an apparatus having a processor and a memory that stores a program and a computer readable medium (abstract, 2:23-50, figs 1- 7), determine that a triggering event has occurred in association with at least one gaming activity at a gaming device said at least one gaming activity including at least one random determination (abstract, 2:29-50, 4:27-35, 5:16-47, 7:31-8:25, figs 1-7, i.e. a wager is in association with a gaming activity of a random outcome in wager to play system), in response to the determination that triggering event has occurred, enable a player associated with gaming device to make an input to request at least one of a product or service to be offered (abstract, 2:5-20 and 23-50, 3:21-5:14, 5:37-6:36, 7:31-8:25, 10:61-65, figs 1-7), if player makes the input to request product/service, determine an individual to communicate with the player (, 2:5-20 and 23-50, 3:21-5:14, 5:37-6:36, 7:31-8:25, 10:61-65, figs 1-7, i.e. individual(s) at number dialed including for entertainment line), determine based on the gaming activity the product or service to be offered to player (, 2:5-20 and 23-50, 3:21-5:14, 5:37-6:36, 7:31-8:25, 10:61-65, figs 1-7, i.e. scope of this language includes determination of

Art Unit: 3714

on/off as well as particularity of service, Walker '431 anticipates at least based on enabling/disabling telephone service based on gaming activity as taught therein), transmit to the individual representing the at least one of product or service to be offered (, 2:5-20 and 23-50, 3:21-5:14, 5:37-6:36, 7:31-8:25, 10:61-65, figs 1-7, i.e. place call or send signal to permit call), enable communication between player and individual via a portable communication device (abstract, 2:5-20 and 23-50, 3:21-5:14, 5:37-6:36, 7:31-8:25, 10:61-65, figs 1-7, i.e. discussion regarding 'portable' communication device from prior action incorporated herein).

Walker '431 also teaches a player engaged in gaming activities at a gaming device would like to communicate with another (abstract, 2:5-20 and 23-50, 3:21-5:14, 7:31-8:25, 10:61-65, figs 1-7) having access to a portable communication device as tethered phone/receiver connected to phone jack (abstract, 2:5-20 and 23-50, 3:21-5:14, ref 109, i.e. phone is portable per tether/cord as similarly stated above incorporated herein), monitor gaming activities of a player at a gaming device (fig 1-7, ref 119, i.e. player tracking), obtain a player identifier (abstract, 1:31-44, 2:23- 50, 3:21-5:14, 7:31-8:25, ref 119, 121), determine an individual who will communicate with player (abstract, 1:31-44, 2:23-50, 3:21-5:14, 7:31-8:25, 10:61-65, figs 1-7, individual at phone number dialed including concierge of admitted prior art or at cited entertainment/chat service) and enable communication between player and individual via the portable communication device (abstract, 1:31-44, 2:23-50, 3:21-5:14, 7:31-8:25, fig 1-7), determin[ing], based on gaming activities, a prompt comprising an offer for product or service to be presented by the individual to the player (abstract, 1:31-44, 2:23-50, 3:21-5:14, 7:31-8:25, figs 1-7, offer of entertainment or chat service upon connection thereto or concierge of admitted prior art offers to provide service request from player), enabling individual to provide a service to the

Art Unit: 3714

player (abstract, 1:31-44, 2:23-50, 3:21-5:14, 7:31-8:25, figs 1-7, the party of entertainment/chat service provides service or concierge of admitted prior art provides service to order show ticket or make dinner/hotel reservations).

In the alternative, Walker discloses claimed process (*supra*) but lacks determine[ing], based on the gaming activities, a prompt comprising an offer for product or service to be presented by an individual to the player and transmit the prompt to the individual [the Office disagrees, but where Walker is not clear, in the alternative, the process is obvious as in evidence herein]. The Office notes the equivalence of offer for product and offer of a service in that each is an offer and that the form of product or service is non-critical. In a related reference, Wynn discloses a computer readable medium encoded with instructions to perform a concierge service system (abstract, 2:10-3:31, 4:45-6:45, 7:28--11:64, figs 1-20A) teaching determine, based on the gaming activities, a prompt comprising an offer for product or service to be presented by an individual to the player and transmit the prompt to the individual such that player information obtained from player tracking system is displayed to prompt concierge and to offer service to aid player with their request such as transfer of funds or operation of a particular game/machine so that communication with a human who knows the identity, preferences and requests of a customer is instantly available (abstract, 2:10-3:31, 4:45-6:45, 7:28-9:33, 11:1-64, figs 1-20A). Wynn is analogous art for either being in the field of applicant's endeavor or, being reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill in the art is as demonstrated by the references. In consideration of US Supreme Court decision in *KSR*, that 'known work in one field of endeavor may prompt variations of it for use in either the same field

Art Unit: 3714

or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art', it would have been obvious to an artisan at a time prior to the invention to apply the process of determine, based on the gaming activities, a prompt comprising an offer for product or service to be presented by an individual to the player and transmit the prompt to the individual as taught by Wynn to improve the process of Walker for the predictable result of alerting concierge to player information so as to be better informed regarding the player and their preferences so as to provide better faster service with a personal touch thereby to ensure a more satisfied customer (Wynn: abstract, 2:10-45, 2:63-3:24, 5:10-28, 6:12-42, 7:28-8:55, 9:15-33, 11:1-64).

Regarding claim 48, as best understood, Walker includes altering the state of the gaming device based on an input received from the individual for casino operator change of parameters based on request by player at the gaming machine who request assistance via portable communication device as to how to effect a change such as locked machine or explain how to operate machine to provide player assistance in altering game device such as unlocking a jammed game device essentially by using phone [either of admitted concierge service or via phone connection device 109 to contact casino personnel] to request assistance at gaming machine. As further evidence under MPEP 2131.01 regarding player requesting assistance at gaming machine, see Raven 5429361 @ 8:15-39 to request drink, change (i.e. denomination change as in exchange dollars into equivalent coin value) or reservation of machine. This is akin to a help button but using the tethered phone 109 to request aid.

Regarding identifiers, Walker disclose player card that identifies a player, thereby teaching the claimed process including an identifier as same structure performing same process

Art Unit: 3714

for same purpose where identifiers of name, address, phone number, hotel room number, email address, payment identifier, credit card number and debit card number fail to critically distinguish as being equivalent identifiers in that each identifies player. Wynn provides further evidence of lack of criticality of identifiers as including player name, player address and hotel room number per guest status (6:6-11). Walker [in view of Wynn] discloses player identifier for player card but lack some of the particular identifiers. However, Walker '431 states player tracking device 119 is well known in the art @ 3:49-50. The associated information stored for player tracking to be used is thus similarly admitted as known by association/extension since a player registers by providing such identifiers in order to use player tracking. The Office notes the equivalence of the various forms of identifiers to identify a player and notes the lack of criticality based on teachings within Walker in view of Wynn. Because Wynn and Walker each pertain to use of player tracking, it would have been obvious to an artisan at a time prior to invention to substitute one identifier for another for the predictable result of identifying player of account. The particularly claimed identifier fails to patentably distinguish over player tracking card, player name, player address or hotel room number by Walker in view of Wynn for identifying player as same structure performing same process for same purpose.

4. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wynn in view of Walker (WO96/00950), and claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Wynn as applied to claim 43 above, and further in view of Walker (WO96/00950). This holding is maintained from prior action. Response to remarks is provided below and incorporated herein. Alternatively, as best understood, Wynn and Walker in view of Wynn each disclose claimed method (supra) but lack altering the state of the gaming device



Art Unit: 3714

based on an input received from the individual includes casino operator change of parameters. In related references, Walker '950 discloses a system where a player using a dedicated gaming computer [a portable communication device] provided by wagering establishment (29:18-22, ref 14) may request a wagering authority 16 to resolve a dispute and alter the state of the gaming device based on input received from the individual at the wagering establishment and acceptance by the player (31 : 15-23). Walker '950 is analogous art for either being in the field of applicant's endeavor or, being reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill in the art is as demonstrated by the references. In consideration of US Supreme Court decision in *KSR*, that 'known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art', it would have been obvious to an artisan at a time prior to the invention to apply the process of altering the state of the gaming device based on an input received from the individual includes casino operator change of parameters as taught by Walker '950 to improve the process of Wynn or the process of Walker '431 in view of Wynn for the predictable result of resolving a dispute to player acceptance.

5. Claims 52-53, 55-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wynn in view of Walker '983. This holding is maintained from prior action. Response to remarks is provided below and incorporated herein. Wynn discloses steps of claimed invention (*supra*) including player identifier (abstract, 2:10-3:29, 4:45-59, 5:7-6:45, 7:28-9:33, esp. 4:45-59, 8:42-50) but lacks other identifiers claimed. Regarding identifiers, Wynn discloses a player card that identifies a player of player account that stores identifiers of player name, player address and

Art Unit: 3714

status as guest that includes room number, thereby teaching the claimed process including an identifier as same structure performing same process for same purpose where identifiers of phone number, email address, payment identifier, credit card number and debit card number fail to critically distinguish as being equivalent identifiers in that each identifies player where an identifier is not structure but information to identify a user of an account and although Wynn lacks the particular identifiers, Wynn discloses an identifier and thus performs same function using same structure for same purpose. In the alternative, in a related reference, Walker '983 discloses a computer readable medium encoded with instructions for directing a processor to perform steps of method including obtaining a player identifier of player name, address, phone number, hotel room number, payment identifier, credit card number, financial account number, home billing address (ref. 4440-4448). Regarding email and debit card, Walker '983 states player identification information denotes any information or compilation of information that uniquely identifies a player (4:51-63, 5:52-65). The Office notes the equivalence of the various forms of identifiers to identify a player and notes the lack of criticality based on teachings within Wynn and Walker. Walker '983 is analogous art for either being in the field of applicant's endeavor or, being reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill in the art is as demonstrated by the references. In consideration of US Supreme Court decision in *KSR*, that 'known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art', because Wynn and Walker each pertain to methods for identifying a player, it would have been obvious to an artisan at a time prior to the

Art Unit: 3714

invention to substitute one method for the other to achieve the predictable result of identifying player. Regarding email and debit card, Walker '983 states player identification information denotes any information or compilation of information that uniquely identifies a player (4:51-63, 5:52-65). The Office notes the equivalence of the various forms of identifiers to identify a player and notes the lack of criticality of email and debit card number based on teachings within Wynn and Walker.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 42-43, 47-48 and 51-61 have been considered but they are not persuasive. In response to applicant's argument regarding claim 42 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., determination to enable the player to make an input to request at least one of a product or service to be offered as alleged on bottom page 7 to top page 8) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). For instance, the remarks on pages 6-8 states in part that Wynn includes interaction between a player and the Concierge as a result of a triggering event occurring in association with at least one gaming activity which includes at least one random determination as an instance wherein a jackpot is won or wherein coin in/coin out data reaches a set level in a period of time, the Office agrees such communication is taught by Wynn but disagrees that is 'only' occurrence(s); however, admission by Counsel/Applicant regarding general interpretation of communication between player and casino representative suffices regarding showing Wynn anticipates determining that a triggering event has occurred

Art Unit: 3714

that enables communication between stated individuals as admitted in remarks. However, remarks on pages 7-8 also allege in those instances of Wynn, a determination is not made to enable the player to make an input to request at least one of a product or a service to be offered since remarks allege that the interaction is automatic such that since the player can always make an input to request one of product or service to be offered in a period of time, no determination is made in Wynn of whether to enable the player to make the input to request at least one of a product or service, the Office respectively disagrees since there is no determination function claimed in manner alleged lacking in Wynn (emphasis by Counsel/Applicant in remarks). The determination claimed is whether a triggering event occurred and that function is taught by Wynn as filed remarks admit and as evidence in holding shows as would have been interpreted by an artisan.

Further regarding amended claim 42, the function 'enable a player associated with the gaming device to make an input to request at least one of a product or service to be offered' is in response to the determination that the triggering event occurred is also taught by Wynn by happenstance of player use of Wynn Concierge service (abstract, 2:10-3:32, 5:1-5, 5:66-6:20, 7:28-11:64, figs 1-20A) as evidence shows in holding and clarified next. As a scenario of happenstance of use regarding Wynn includes a player using call button or handset to request service for coin jam, out of coins or other failure (5:1-5) that although Wynn indicates system communicates such data, a player is not prevented/blocked from requesting assistance for machine maintenance or for need for change/coins at the player choice. It is reiterated as stated in holding that there is no critical difference between an offer for a product and an offer for a service where any particular product does not critically differ from any particular service in this

Art Unit: 3714

case (supra). Also, a request for service related to a coin jam is in association with a monitored gaming activity that includes a random determination in so far as the jammed coin prevents game play to generate a random outcome from play by its occurrence; while, similarly, where the player or machine is out of coins/tokens for player to request change or coin/token fill, is also associated as claimed due to player not being able to continue wagering since the player is out of currency/tokens used to play that machine or the machine is out of coins/tokens to dispense as award (that based on outcome replenishes players wagers upon winning outcomes). In addition, a player may use the system to request service for reservations at their choice that although an outcome may not be a jackpot, the player may feel festive and desire to take spouse/friend to theatre or dinner to celebrate a game outcome or cumulative game outcomes over a period of play, such that, at the players discretion based on such outcomes of random determination(s) where the programming to permit player to make such request at their choice was made by casino in programming concierge system to allow player to make requests at their option when system was designed/programmed. Also, whether Wynn is an always on system does not preclude anticipation of presently claimed function at least since there presently is no claimed determination to enable as alleged. Permitting player to make request to repair machine, provide coins/change or reservations is akin to use of call button in prior art or as taught by related reference to Raven 5429361 @ 8:15-29 previously noted in holding; while, Wynn, although teaches similar services @ 2:38-46, permits personal interface between player and casino representative to facilitate more personal service to player/customer of casino facilities thereby enhancing overall customer experience by providing better, faster service @ 3:20-32. In summary, the particular timing of enabling user request service/product based on link to an

Art Unit: 3714

occurrence of a triggering event in association with a gaming activity including a random determination fails to distinguish over teachings of Wynn as would have been interpreted by an artisan that allows player to request service of casino rep at players choice that by happenstance is based in part on random determination of game outcome(s) that precipitates player request. In essence, the alleged function fails to patentably distinguish in this case, as would have been interpreted by an artisan. Thus Wynn discloses a computer readable medium performing same function for same purposes by same structure as in amended claims.

In reply to remark on page 8 that claims 51 and 52 are patentable based on their dependency from claim 42 and claim 43, 47 claims certain elements similar to claim 42, the Office agrees 51 and 54 depend from claim 42 and that claim 43, 47 claims certain elements similar to claim 42, but the Office disagrees claims 43, 47, 51 and 54 are patentable for same reasons stated above regarding claim 42, as would have been interpreted by an artisan, thus, the discussion above is incorporated herein regarding claims 43, 47, 51 and 54.

In reply to comment regarding claim 42 on pages 8-10 that Walker I [in use of same nomenclature designated in response] and Wynn do not anticipate or render obvious the highlighted function of claim 42 since Walker I repeatedly indicates players are rewarded service for continuing to place wagers (emphasis as by comment filed), the Office disagrees since as would have been interpreted by an artisan, first Wynn teaches claimed function as noted above incorporated herein and, second the language of claimed function fails to preclude teachings by Walker I at least since wagers are 'in association with at least one gaming activity including at least one random determination' for wager to play games. The comment appears to imply that that play of Walker I is free to play, but there is no such teaching within Walker I since a wager

Art Unit: 3714

is required by player to use system of Walker I and by extension a wager is by definition in association with the claimed process of a random determination. The comment to distinguish based on functional use fails to be persuasive in this case as would have been interpreted by an artisan.

The Office agrees with remark on page 10 that chat service of Walker I can be service claimed, but also the general telephone service is service claimed as taught by Walker I. In essence, the process stored on medium as claimed is taught by Walker I or, in the alternative, suggested by combination such that as evidence shows in holding Walker I teaches or Walker I in view of Wynn suggests that upon a wager being detected/determined, enable a player associated with gaming device where wager occurred to make an input to request a service to entertainment/chat line to be offered, where if such request is made, determine an individual to communicate with player (chat line individual for horoscope, etc.), determine based on gaming activity a product/service to offer, transmit to individual data representing the determined product/service to be offered, and enable communication between player and individual via communication device (abstract, 2:22-50, 3:34-50, 4:7-6:35, 7:31-8:21) since as noted by filed remarks, Walker I accumulates time based on wager and game play resultant from those wagers where based on gaming activity of wagers as in association thereto over time a player is enabled to access audio services including chat line or telephone service to communicate with an individual as the service.

In response to applicant's argument on page 8-11 that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight

Art Unit: 3714

reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, as noted above incorporated herein, Walker I teaches the function alleged as lacking regarding triggering event has occurred in association with at least one gaming activity, the at least one gaming activity including at least one random determination since a wager is in association with gaming activity including a random determination (*supra*) where hindsight reasoning does not apply when function is clearly taught by reference. However, in the alternative, Wynn also teaches function as noted above incorporated herein and thus the combination renders the computer readable medium obvious as would have been interpreted by an artisan. The standard of patentability remains as what the combination when taken as a whole would suggest to an artisan when taken at a time prior to the invention. In this case, the combination of Walker I with Wynn when taken as a whole by an artisan at a time prior to the invention, the combination suggests a computer readable medium storing instructions for directing processor to perform the claimed functions.

In reply to remark on page 11 that claims 51-61 are patentable based on their dependency from claim 42 and claim 43 and 47 claim certain elements similar to claim 42, the Office agrees 51-61 depend from claim 42 and that claim 43 and 47 claims certain elements similar to claim 42, but the Office disagrees that claims 43, 47 and 51-61 are patentable for same reasons stated above regarding claim 42, as would have been interpreted by an artisan, thus, the discussion above regarding claim 42 is incorporated herein regarding claims 43, 47, and 51-61.



Art Unit: 3714

In response to remark regarding claim 48 on pages 11-13 that Wynn and Walker I does not anticipate or render obvious determining that a triggering event has occurred in association with at least one gaming activity at a gaming device, the at least one gaming activity including at least one random determination, and in response to the determination that the triggering event has occurred, enabling a player associated with the gaming device to make an input to request at least one of a product or a service to be offered, the Office disagrees for reasons stated above regarding claim 42 from which the cited function originates where evidence shows Wynn and Walker I each anticipate cited function or, Wynn in view of Walker I suggest claimed function.

In reply to arguments on pages 14-15 that Wynn does not anticipate aforementioned function as presently argued regarding claims 52-53 and 55-61, the Office disagrees for reasons stated above regarding claim 42 from which the function originates. Walker '983 was not relied upon to teach function regarding determination of triggering event having occurred where evidence shows Wynn teaches function due to its breadth failing to preclude.

In response to applicant's argument on page 14-15 that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The evidence shows Wynn teaches an identifier. The particular form of identifier does not critically distinguish as evidence in view of Walker '983 in holding demonstrates where in consideration of decision by US Supreme Court

Art Unit: 3714

in KSR, it would have been obvious to an artisan at time prior to invention to substitute one identifier for the other to achieve the predictable result of identifying user.

Finally, the Office disagrees with implied or inferred assertion that a wager is not gaming activity at a gaming device based on a random determination at least since a game outcome is generated only if a wager is provided in wager-to-play casino systems, such as Walker or Wynn.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 3714

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Sager/  
Primary Examiner, Art Unit 3714